

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

CIVIL ACTION NO.: 1:17-cv-00854-TDS-LPA

REBECCA KOVALICH and
SUZANNE NAGELSKI,

Plaintiffs,

vs.

PREFERRED PAIN MANAGEMENT
& SPINE CARE, P.A., *et al.*,

Defendants.

DEFENDANT SHERRY SPIVEY'S
MOTION FOR SUMMARY
JUDGMENT AS TO PLAINTIFF
REBECCA KOVALICH'S CLAIMS

NOW COMES Defendant Sherry Spivey, individually, (“Defendant” or “Spivey”), and pursuant to Rule 56 of the Federal Rules of Civil Procedure, and requests the entry of Summary Judgment in favor of Defendant as to all claims asserted by Plaintiff Rebecca Kovalich in this action. Defendant respectfully requests that Defendant’s Motion for Summary Judgment be granted, upon the grounds that the pleadings, discovery materials, and other evidence of record demonstrate there is no genuine issue as to any material fact, and Defendant is entitled to judgment as a matter of law. Specifically, Defendant is entitled to summary judgment on the following grounds, among others, as explained more fully in Defendant’s Memorandum of Law in Support of her Motion for Summary Judgment filed simultaneously herewith:

- Plaintiff’s claim for tortious interference with contract must fail because Sherry Spivey is protected by a qualified privilege.

- Plaintiff's claim for tortious interference with contract must fail because Plaintiff has failed to proffer evidence that Sherry Spivey intentionally induced PPM to terminate Kovalich's at-will employment contract.
- Plaintiff's claim for tortious interference with contract must fail because Plaintiff has failed to proffer evidence that Sherry Spivey acted with legal malice.
- Plaintiff's claim for tortious interference with contract must fail because Plaintiff has failed to proffer evidence that Sherry Spivey acted without justification.
- Plaintiff's claim for violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1140, must fail because Sherry Spivey was not Plaintiff's employer.
- Plaintiff's claim for violation of ERISA must fail because Sherry Spivey did not discharge Plaintiff.
- Plaintiff's claim for violation of ERISA must fail because Sherry Spivey did not have a specific intent to interfere with Plaintiff's vesting the Cash Balance Plan.
- Plaintiff has failed to produce evidence to establish a claim for punitive damages.
- Plaintiff punitive damages claim is derivative of Plaintiff's other claims, which all fail.
- Plaintiff has not proffered evidence that Sherry Spivey's actions constituted fraud, malice, or willful or wanton conduct.

WHEREFORE, Defendant Sherry Spivey respectfully requests that Sherry Spivey's Motion for Summary Judgment be GRANTED, that Plaintiff Rebecca Kovalich's claims should be DISMISSED WITH PREJUDICE, and for such other and further relief as the Court deems just and proper.

Respectfully submitted this the 1st day of October, 2018.

JACKSON LEWIS P.C.

/s/ Ann H. Smith

ANN H. SMITH

N.C. State Bar No. 23090

CAITLIN M. GOFORTH

N.C. State Bar No. 49227

Attorneys for Defendants

3737 Glenwood Avenue, Suite 450

Raleigh, NC 27612

Telephone: (919) 760-6460

Facsimile: (919) 760-6461

Email: Ann.Smith@jacksonlewis.com

Email: Caitlin.Goforth@jacksonlewis.com

Case 1:17-cv-00854-TDS-LPA Document 40 Filed 10/01/18 Page 4 of 4